The amount of interest allowed by the Court of Claims on the sum of $82,701.29 was $58,607.64, being interest at six per cent. from June 14, 1924, the date when the Commissioner made the erroneous assessment of $191,403.77 down to April 6, 1936, the date of the judgment herein.

On behalf of the petitioner it is respectfully submitted that the allowance of said interest under all the facts and circumstances of this case constitutes reversible error.

There is no dispute about the facts.

The petitioner brought suit in the Court of Claims on February 25, 1922, against the United States, alleging breach by the United States of five formal contracts entered into by it with the petitioner for the manufacture of propellers for airplanes after the United States entered the World War. In this suit the petitioner claimed that $144,238.03 was due it by the United States. On November 12, 1927, The United States filed a counterclaim, including therein a deficiency income and excess profit tax assessment for $191,403.77, for the year 1918, which deficiency assessment had been made by the Commissioner on the fourteenth day of June, 1924. The case being at issue the Court of Claims had before it, for determination, the petitioner's claim of $144,238.03 and the United States' counterclaim of $191,403.77.

The Court of Claims found that the United States was indebted to the petitioner, as of the year 1918, in the sum of $119,413.04 (R. 77). It also finally found that the amount of additional income and excess profit tax due by the petitioner for the year 1918 was $82,701.29 instead of $191,403.77, the deficiency tax as originally assessed against the petitioner by the Commissioner on June 14, 1924 (R. 45). The Court of Claims instead of entering up judgment for the petitioner for $36,711.75, the amount by which the claim of the petitioner against the United States, as found by the Court of Claims exceeded the claim of the United States against the petitioner, as found by the Court of Claims, entered judg-

ment in favor of the United States against the petitioner in the amount of $21,895.89, the difference representing the interest item of $58,607.64 above mentioned.

The Court of Claims in its opinion, in explanation and justification of its action said:

> "We can find no authority for applying in payment upon a tax previously assessed the amount later allowed by the Court on an unliquidated and disputed claim not relating to taxes. The conclusion we have reached brings an inequitable result, but the inequity is not in the failure to make the credit but in not allowing interest on the plaintiff's claim In this matter we are compelled to follow the law as we find it." (Rec. page 45).

The Court of Claims based its decision upon the case of United States v. Verdier, and in its opinion quoted certain language appearing therein (R. 81 to 83).

We respectfully submit that that case differs very materially from the case at bar, and when carefully analyzed will be found not to be controlling.

Two separate suits were there involved. James R. Verdier was a duly qualified postmaster of Beaufort, South Carolina, from July 1, 1866, to April 30, 1869. Upon his retirement from office he appeared as indebted to the United States, on the face of his postal accounts. On June 28, 1870, an action was brought by the United States against him on his official bond, in the United States District Court for the District of South Carolina, to recover his alleged indebtedness. There was a verdict against Verdier, which verdict was, upon motion of his attorney, set aside. The second trial resulted also in a verdict against him, and on January 25, 1871, judgment was entered thereon for $1,059.93. On November 3, 1885, application was made to the Postmaster General by Verdier's Administrator, for a re-adjustment of decedent's salary as postmaster under the provisions of the Act of March 3, 1883 (22 Stat. at L., 487), and on December 23,

1885, said salary was re-adjusted and the sum of $2,892.84 found due decedent's estate. On August 4, 1886, a sum of money was appropriated by Congress to pay this allowance. Meanwhile, of course, interest had been running on the judgment that the United States had secured against James R. Verdier on January 25, 1871. The interest on this judgment, down to August 4, 1886, the date of the appropriation by Congress, and the costs of suit, added to the original judgment, aggregated the sum of $2,296.77. This latter sum was deducted from the amount of the readjusted salary, which left a balance of $596.07.

The administrator of Verdier contended that, inasmuch as under the salary adjustment of December 23, 1885, the United States owed the decedent $2,892.84, only the principal amount of the judgment should be deducted from this sum, instead of the judgment with interest, as was actually done.

This Court decided against the contention of the administrator of the Verdier estate, and, although in the course of its opinion, it did use the language quoted by the Court of Claims, it also stated as follows:

> "Nor is it strictly true to say that the Government was indebted to Verdier at the date of its judgment against him. He had performed services for which an indebtedness was subsequently *voluntarily* created by the Government, but until readjustment was made the law imposed no obligation upon the Government to pay him an increased salary. *Verdier could not have availed himself of it as a set-off or counterclaim to his own debt to the Government*, and in fact it never became a debt until the claim was *and in fact it never became a debt until the claim was liquidated under the Act of* 1883." (Italics supplied.)
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> * * * * *
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> "By the Act of 1883 no re-adjustment could be made except upon the application of the postmaster, and when that application was made in this case, the salary was, for the first time, re-adjusted. Until

this time the debt was not liquidated * * * in fact, it *would be more accurate to say that it did not exist.*" (Italics supplied.)

In the case at bar no judgment was ever entered against the American Propeller and Manufacturing Company for the amount of the deficiency tax, as found by the Court of Claims, but, on the contrary, the American Propeller and Manufacturing Company was entitled to avail itself, as a set-off or counterclaim against the correct amount of the tax, of such portion of its claim against the Government as was sufficient to wipe out the tax. The *correct* amount of the tax was $82,701.29, as found by the Court of Claims, and the *correct* amount of the Government's indebtedness was $119,413.04, as also found by the Court of Claims in the same suit, to have been due and owing since the end of 1918. Both amounts being due, as of the same year, and the difference between the two amounts being a balance of $36,711.75 in favor of the American Propeller and Manufacturing Company, it follows that there never was a time when the American Propeller and Manufacturing Company was actually indebted to the United States. This was not the situation in the *Verdier* case. The American Propeller and Manufacturing Company *is not asking for interest on this balance of $36,711.75 that has been due it by the United States ever since the year 1918*, but only asks that the amount representing this indebtedness of the United States to it be paid, *without interest*. This request violates no statutes of the United States or policy of the United States in the matter of the payment of claims due by it to its citizens. On the contrary, the failure to make such payment would seem to violate every principle of fair dealing and justice. Federal statutes make ample provision for the crediting of overpayment of taxes against a deficiency assessment. Here, instead of there being an overpayment of taxes by the American Propeller and Manufacturing Company, to be credited against a deficiency assessment, there is a finding by the

Court of Claims of an actual indebtedness by the United States to the American Propeller and Manufacturing Company of $119,413.04 as of 1918, representing money spent by the American Propeller and Manufacturing Company for the use and benefit of the United States in the prosecution of the World War. Moreover, as of 1918, the American Propeller and Manufacturing Company owed the United States *only* $82,701.29 (the matter of interest not arising or being involved until 1924), and as an off-set to this indebtedness there was then, in 1918, due the American Propeller and Manufaturing Company by the United States $119,413.04, leaving a net indebtedness of $36,711.75 due the American Propeller and Manufacturing Company by the United States, thus completely wiping out the claim of the United States. In 1924 there was no indebtedness due by the American Propeller and Manufacturing Company to the United States to which interest could properly attach or be added.

The United States Statute relating to the addition of interest upon an assessment for taxes from the date of the assessment should be given a fair and reasonable interpretation, and not one that brings about a manifest injustice and wrong. It was designed to produce the prompt payment of taxes admittedly due by imposing a penalty upon those wrongfully withholding payment.

The petitioner is here being penalized, not because of any wrong-doing or negligence on its part, but because of error and wrong on the part of the United States Government representatives. Payment of a just claim of the petitioner, in the amount of $119,413.04, as finally determined by the Court of Claims, has not only been withheld and refused by the United States since 1918, but after improperly and unjustly withholding such payment for a period of six years, the Government then, in 1924, for the first time asserted a tax claim for the year 1918 against the petitioner for the very large and erroneous amount of $191,403.77.

The Court of Claims finally, after a lapse of many years, found this belated claim to be erroneous and unwarranted to the extent of $108,711.75.

The erroneous contentions of the Government not only resulted in withholding from the petitioner $119,413.04 which should have been paid the petitioner in 1918, but compelled the petitioner to resist the improper and excessive demand of the Government for taxes. Moreover, the improper withholding by the Government from the petitioner during all of these years of the large sum of money justly due the petitioner, made it impossible for the petitioner to pay, in the first instance, the unjust and excessive demand of the Government for taxes, or any part thereof, or even the part afterwards found to be due, and then seek to recover back the amount that might be held thereafter to have been improperly collected.

The petitioner, therefore, resorted to the only course open to it, namely, its suit in the Court of Claims. In this suit the Government filed as a counterclaim the erroneous and excessive assessment of additional income taxes for the year 1918 in the amount of $191,403.77. The case then proceeded in regular course and the Court of Claims found that there was justly due the petitioner, by the United States, as of the end of the year 1918 $119,413.04, and that as of the same date the petitioner owed the Government, for additional taxes for the year 1918, $82,701.29, a difference in favor of the petitioner of $36,711.75.

As of that date, therefore, namely, 1918, no question of interest was involved, and as the amount found to be due the petitioner by the Government was in excess of the amount found to be due the Government by the petitioner, and as these findings were by the same Court, at one and the same time, in one and the same suit, the petitioner should, in equity, fairness and justice, be entitled to a judgment for the excess, to wit, $36,711.75.

Under the judgment of the Court of Claims complained of, the United States, by improperly withholding from the petitioner, for eighteen years, what was justly due it, and at the same time asserting an unjust and excessive claim for additional taxes, has succeeded not only in liquidating its own debt of $36,711.75 by no payment whatsoever thereon, but has made the petitioner its debtor in the amount of $21,895.89.

Under the authority of the language used by this Court in the *Verdier* case, and above quoted, it would appear to be established that if the Government had brought suit against the American Propeller and Manufacturing Company for $191,403.77, the amount of the additional income tax for 1918 assessed against it, the American Propeller and Manufacturing Company could have availed itself of its claim against the Government as a set-off or counterclaim. Here the situation is merely reversed. In the suit of the American Propeller and Manufacturing Company against the United States, the United States set up its tax claim against the American Propeller and Manufacturing Company as a set-off or counterclaim, so here again the case at bar differs most materially from the *Verdier* case.

We are asking this Court to apply to the present case the principles it applied in the case of *District of Columbia v. Johnson*, 165 U. S. 330. There the District of Columbia, appellant, was endeavoring to off-set against the claim of the claimant, the appellee, interest for a number of years on a counterclaim that had been found by the Referee in favor of the District of Columbia, but which counterclaim was wiped out by the Act of Congress of February 13, 1895 (28 Stat. at L. 664), as found by this Court. The Court of Claims had adopted the contention of the District of Columbia. This Court, in passing upon the matter, said as follows:

> "The claim of the Appellant to off-set against any recovery here the amount of the interest from June

> 1, 1874, on its counterclaim found due in its favor against the claimants, in the report of the referee, we think cannot be admitted. The effect of the passage of the Act of 1895, is in substance, the same as if the counterclaim, which is the principal sum, had been paid, and when that is the case the interest becomes thereby extinguished."

So in the case at bar the Court of Claims found that although as of 1918 the American Propeller and Manufacturing Company owed the United States $82,701.29, the United States, as of the same date, owed the American Propeller and Manufacturing Company more than $82,701,29, to wit, $119,413.04. The effect of these findings of the Court of Claims, to use the language of this Court just quoted, is "in substance the same as if the counterclaim, which is the principal sum, had been paid, and when that is the case the interest becomes thereby extinguished."

The position of the American Propeller and Manufacturing Company is, moreover, much stronger than that of the appellee in the *Johnson* case, because in the *Johnson* case the wiping out of the counterclaim of the District of Columbia, by the Act of 1895, was a *mere gratuity*, as was also true in the *Verdier* case, so far as the allowance of adjusted compensation under the Act of 1883 (22 Stat. at L. 487), is concerned, whereas, here the counterclaim of the United States was wiped out and paid by an actual credit on an actual indebtedness of the United States to the petitioner, and, in addition, the petitioner was never, at any time, actually indebted to the United States upon a proper statement of the account between them, and hence there was never any indebtedness of the petitioner to which interest could properly attach.

The case at bar comes within the principles announced and applied by this Court in the cases of Luckenbach Steamship Company v. Norwegian Barque Thekla, 266 U. S. 328 and Bull v. United States, 295 U. S. 247.

In the *Luckenbach Steamship Company* case the United States filed a claim in admiralty against the Barque Thekla for injury inflicted upon its vessel S. S. F. J. Luckenbach. The owners of the Barque Thekla filed a cross libel. In disposing of the case Mr. Justice Holmes in the course of his opinion said:

> "When the United States comes into court to assert a claim, it so far takes the position of a private suitor as to agree by implication that justice may be done with regard to the subject matter. The absence of legal liability in a case where, but for its sovereignty, it would be liable, does not destroy the justice of the claim against it. * * * The libel in such a case is like a bill for an account, which imports an offer to pay the balance if it should turn out against the party bringing the bill. Colombian Government v. Rothschild, 1 Sim. 94, 103, 57 Eng. Reprint, 514, 5 L. J. Ch. 43, 27 Revised Rep. 171; Goldthwait v. Day, 149 Mass. 185, 187, 21 N. E. 359.
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> "The reasons that have prevailed against creating a government liability in tort do not apply to a case like this, and, on the other hand, the reasons are strong for not obstructing the application of natural justice against the government by technical formulas when justice can be done without endangering any public interest. As has been said in other cases, the question of damages to the colliding vessel necessarily arose, and it is reasonable for the court to proceed to the determination of all the questions legitimately involved, even when it results in a judgment for damages against the United States. * * * It is said that there is no statute by which the government accepted this liability. It joined in the suit, and that carried with it the acceptance of whatever liability the courts may decide to be reasonably incident to that act."

This Court thus held that because the United States had come into court to assert a claim it could be held liable even for a tort and for interest and costs.

In the case at bar, theUnited States came into Court and asserted a counterclaim. By so doing, to use the language of Mr. Justice Holmes above quoted:

> "* * * it so far takes the position of a private suitor as to agree by implication that justice may be done with regard to the subject matter. The absence of legal liability in a case where, but for its sovereignty, it would be liable, does not destroy the justice of the claim against it."

Again quoting the language of Mr. Justice Holmes:

> "It is like a bill for an account which imports an offer to pay the balance if it should turn out against the party bringing the bill."

In the case at bar, as in the *Luckenbach Steamship Company* case:

> "* * * the reasons are strong for not obstructing the application of natural justice against the government by technical formulas when justice can be done without endangering any public interest."

In the *Bull* case also, as in the case at bar, there were present features of unusual hardship and injustice. That case also came before this Court on a writ of certiorari to the United States Court of Claims. There the Estate of Archibald H. Bull had paid an estate tax of $41,517.45 based upon a sum of $212,718.79 as constituting part of the corpus of the estate, as insisted upon by the Commissioner of Internal Revenue. Four years afterwards the Commissioner determined that $200,117.09 of the above sum of $212,718.79 should have been returned by the Executor also as income, and made a deficiency income tax assessment, based upon such finding. The Executor appealed from said deficiency assessment to the Board of Tax Appeals but the Board sustained the Commissioner's action and determined a deficiency of $55,166.49 which, with interest added of $7,510.95, was paid by the Executor on April 14, 1928.

On July 11, 1928, the Executor filed a claim for refund of this amount. The claim was rejected May 8, 1929, and on September 16, 1930, the Executor brought suit in the Court of Claims and in his petition, after setting forth the facts as he alleged them to be, prayed judgment in the alternative "(1) for the principal sum of $62,677.44, the amount paid April 14, 1928, as a deficiency of income tax unlawfully assessed and collected, or (2) for the sum of $47,643.44 on the theory that if the sum of $200,117.99 was income for the year 1920, and taxable as such, the United States should have credited against the income tax attributable to the receipt of this sum the overpayment of estate tax resulting from including the amount in the taxable estate,—$34,035, with interest thereon."

The Court of Claims held that the item was income and properly so taxed and denied the alternative relief sought because the claim was barred by limitations.

This Court held that the decision of the Court of Claims as to what constituted income was correct. It was also evident that the application for a refund of the overpayment of the estate tax was not filed within the time prescribed by statute. It was clearly evident, however, that the estate had paid both an estate tax and an income tax on the same sum of money, and that the United States had been improperly enriched and had money belonging to the Bull Estate which it had no moral right to retain. Under these circumstances this Court was astute to find a reason why the United States had no legal right to hold on to this unjust enrichment. The Court after stating that

> "The fact that the petitioner relied on the Commissioner's assessment for estate tax, and believed the inconsistent claim of deficiency of income tax was of no force, cannot avail to toll the statute of limitations, which forbade the bringing of any action in 1930 for refund of the estate tax payments made in 1921."

asked:

> "Upon what theory, then, may the petitioner obtain redress in the present action for the unlawful retention of the money of the estate?"

In answering this question the Court reviewed the nature of a tax and the means of enforcing its collection. In the course of this explanation the Court said:

> "The taxpayer often is afforded his hearing after judgment and after payment, and his only redress for unjust administrative action is the right to claim restitution. But these reversals of the normal process of collecting a claim cannot obscure the fact that after all what is being accomplished is the recovery of a just debt owed the sovereign. If that which the sovereign retains was unjustly taken in violation of its own statute, the withholding is wrongful. Restitution is owed the taxpayer."

A little later on in the opinion the Court quotes, with approval, the following from United States v. Ringgold, 8 Pet. 150, 163, 164:

> "No direct suit can be maintained against the United States. But when an action is brought by the United States, to recover money in the hands of a party who has a legal claim against them, it would be a very rigid principle, to deny to him the right of setting up such a claim in a court of justice, and turn him round to an application to Congress. If the right of the party is fixed by the existing law, there can be no necessity for an application to Congress, except for the purpose of remedy. And no such necessity can exist, when this right can properly be set up by way of defense, to a suit by the United States."

This Court finally held that notwithstanding the fact that the suit in the Court of Claims had been brought by the Executor of the Bull Estate against the United States, and that the United States had filed no counter-

claim, nevertheless the bar of the statute of limitations was not effective because the claim of the Executor was, in effect, in the nature of a recoupment against a summary demand for income tax, asserted in 1925 and paid April 14, 1928. This Court accordingly held that the Executor of the Bull Estate was entitled to have credited against the deficiency of income tax that had been *correctly* assessed, the amount of his overpayment of estate tax, with interest, notwithstanding the fact that his suit for the recovery of this overpayment was barred by the applicable statute of limitations, and that he should have been given judgment accordingly.

While it is true that in the case at bar the United States had actually received no money of the petitioner, it had been actually indebted to the petitioner for propellers which it had received from the petitioner but had not paid for and for money which the petitioner had expended on behalf of the United States, at its request, and the United States had had those propellers since 1918 and had enjoyed the benefit of the petitioner's money since 1918.

The United States, therefore, ever since 1918 had wrongfully withheld from the taxpayer, the petitioner, $119,413.04 which the petitioner, certainly, in justice and equity, should be permitted to set-off against the claim of the United States for a deficiency tax for 1918 asserted by the United States by a counterclaim filed against the petitioner in a proceeding in the Court of Claims, and as both claims matured the same year, to wit, 1918, and as the actual indebtedness of the United States to the petitioner exceeded the actual indebtedness of the petitioner to the United States by $36,711.75, a judgment for at least that amount should, in equity and justice, be entered for the petitioner.

The counterclaim of the United States, as found by the Court of Claims in the amount of $82,701.29, is a

deficiency income and excess profit tax due by the petitioner for the year 1918. Under the Act of 1918, it is clear that interest could not be awarded on a deficiency income and excess profit tax for that year from the time the tax was really due until a deficiency tax was assessed (Ford Motor Co. v. United States, 9 F. Supp. 590, 602 (C. Cls.), certiorari denied, 296 U. S. 636, and Standard Oil Co. v. United States, 10 F. Supp. 550, 562 (C. Cls.). However, there are other provisions in the Revenue Act of 1918 which would seem to authorize the allowance of interest on a deficiency assessment accounting from the date of the deficiency assessment, *upon notice and demand for payment by the Collector.*

In the case at bar, the excessive and erroneous deficiency assessment of $191,403.77 was made by the Commissioner of Internal Revenue on June 14, 1924. This erroneous and excessive assessment was set aside by the Court of Claims on April 6, 1936, and the Court of Claims has allowed interest on the correct amount, as found by it, to wit, $82,701.29 from June 14, 1924, to said April 6, 1936.

We respectfully submit that it is within the spirit of the Revenue Law of 1918, if not within the very letter of that Act, that interest is not properly chargeable from the date of a deficiency assessment unless the deficiency assessment is a *proper one*. Certainly in the case at bar the assessment of the Commissioner of June 14, 1924, was so excessive and erroneous that it should be ignored as furnishing the date from which interest should be charged upon a correct assessment not made until twelve years thereafter, when the Court of Claims corrected the Commissioner's erroneous assessment, the United States during all that period being indebted to the taxpayer in an amount much greater than the amount of the correct assessment.

FINALLY.

Sub-sections (b) (2), (c), and (e), of Section 250, of the Revenue Act of 1918, *require* a notice from and demand for payment by the *Collector*, as distinguished from the *Commissioner* of Internal Revenue, as a condition precedent to the right of the Government to collect interest upon a deficiency assessment for the year 1918. The burden of proving such notice and demand manifestly rests upon the United States.

See Selma, Rome and Dalton R. R. Company v. United States, 139 U. S. 560, at 568, where this Court quoted with approval from 1 Greenleaf on Evidence, and also from Starkie on Evidence, as follows:

> "It has been established as a general rule of evidence that the burden of proof lies on the person who wishes to support his case by a particular fact, which lies more particularly within his knowledge, or of which he is supposed to be cognizant."

In Omaha Hotel Company v. Wade, 97 U. S. 13, this Court held that:

> "The burden of proof is upon the party making an affirmative allegation."

and in United States v. Linn, 1 Howard 104, it is said:

> "He who holds the affirmative must prove it."

The Respondent holds the affirmative so far as its counterclaim is concerned.

No allegation or proof of such notice from and demand for payment by the *Collector*, as required by said sub-sections of the Act of 1918, is contained in the Findings of Fact of the Court of Claims or in the record in the case. The only *proof* bearing in any way upon this point will

be found in the Court of Claims' Findings of Fact on page 66 of the record and is as follows:

> "June 14, 1924, the *Commissioner* assessed against Plaintiff a tax for 1918 of $191,403.77, in addition to that already assessed and paid, and duly notified the Plaintiff with regard thereto. No part thereof has been paid by the Plaintiff." (Finding No. 40, R. 66.)

The only *allegation* bearing upon this point in any way will be found in the amended counterclaim of the United States filed November 12, 1927, reading as follows:

> "In the year 1924 the *Commissioner* of Internal Revenue made an additional assessment of income taxes against the Plaintiff for the year 1918 in the amount of $191,403.77. This assessment appears on the 1924 list No. June 0080 L. No. 6. The Plaintiff was duly *notified of such assessment* and said taxes have not been paid." (R. 44).

Neither the above Finding of Fact nor the above Allegation proves either notice from or demand by the *Collector*. At the most they merely show notice of the assessment from the *Commissioner*—but no demand for payment whatsoever from any one.

The Revenue Act of 1918 defines the term "*Commissioner*" as follows:

> "The term '*Commissioner*' means the Commissioner of Internal Revenue."

and the term "*Collector*" as follows:

> "The term '*Collector*' means Collector of Internal Revenue."

Hence, the Statute not having been complied with, interest cannot be added *thereunder*.

For the above reasons it is respectfully submitted that the Court of Claims erred in not entering a judgment in

favor of the petitioner, American Propeller and Manufacturing Company in the amount of $36,711.75, instead of a judgment against the American Propeller and Manufacturing Company in the amount of $21,895.89.

Respectfully submitted,

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APPENDIX.

Act of Congress of February 24, 1919, c. 18, 40 Stat. L. 1057, 1083 (cited as Revenue Act of 1918):

"Sec. 250. (b) [2] If the amount already paid is less than that which should have been paid, the difference shall, to the extent not covered by any credits then due to the taxpayer under Section 252, be paid upon notice and demand by the collector. In such case if the return is made in good faith and the understatement of the amount in the return is not due to any fault of the taxpayer, there shall be no penalty because of such understatement. If the understatement is due to negligence on the part of the taxpayer, but without intent to defraud, there shall be added as part of the tax 5 per centum of the total amount of the deficiency plus interest at the rate of 1 per centum per month on the amount of the deficiency of each installment from the time the installment was due.

If the understatement is false or fraudulent with intent to evade the tax, then, in lieu of the penalty provided by Section 3176 of the Revised Statutes, as amended, for false or fraudulent returns willfully made, but in addition to other penalties provided by law for false or fraudulent returns, there shall be added as part of the tax 50 per centum of the amount of the deficiency.

Sec. 250. (c) If the return is made pursuant to Section 3176 of the Revised Statutes as amended, the amount of tax determined to be due under such return shall be paid upon notice and demand by the collector.

Sec. 250. (e) If any tax remains unpaid after the date when it is due, and for ten days after notice and demand by the collector, then, except in the case of estates of insane, deceased, or insolvent persons, there shall be added as part of the tax the sum of

5 per centum on the amount due but unpaid, plus interest at the rate of 1 per centum per month upon such amount from the time it became due: PROVIDED, That as to any such amount which is the subject of a bona fide claim for abatement such sum of 5 per centum shall not be added and the interest from the time the amount was due until the claim is decided shall be at the rate of ½ of 1 per centum per month.

In the case of the first installment provided for in subdivision (a) the instructions printed on the return shall be deemed sufficient notice of the date when the tax is due and sufficient demand, and the taxpayer's computation of the tax on the return shall be deemed sufficient notice of the amount due."